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Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

COMPLAINT

- v. -

PATRICK MULLALY,

Defendant.

-----X

Plaintiff United States of America (the "United States"), by and through its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, alleges upon information and belief that:

1. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1345.
2. Defendant Patrick Mullaly (the "defendant") resides at 18 Van Brook Drive Stormville, NY, 12582 within the Southern District of New York.
3. Defendant applied for and received a student loan from the lender whose name is set out in the defendant's promissory note(s) evidencing the loan, copies of which are annexed hereto as Exhibit A and incorporated herein.
4. Defendant defaulted on said note(s) and owes the amount said note(s) and interest.
5. The United States is the assignee and present holder of said note(s).

6. The amount due and owing plaintiff by defendant on said note(s) is \$42,861.04, plus interest in the amount of \$11,998.22 as of February 5, 2018, with interest accruing thereafter at the rate of 2.875 percent per annum. A Certificate of Indebtedness from the United States Department of Education is annexed hereto as Exhibit B and incorporated herein.

SECOND CAUSE OF ACTION

7. Plaintiff repeats and realleges the allegations contained in paragraphs numbered one through six.

8. Plaintiff insured the aforementioned note(s) pursuant to Title IV of the Higher Education Act of 1965, Public Law 89-329.

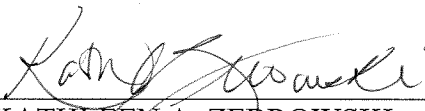
9. The lender made an insurance claim on the United States for the amount of the lender's loss arising from the defendant's default on said note(s), which claim has been paid by the United States to the lender.

10. Plaintiff is entitled to be indemnified by defendant in the amount of \$54,859.26 as of February 5, 2018, with interest accruing thereafter at the rate of 2.875 percent per annum.

WHEREFORE, plaintiff demands judgment against defendant in the amount of \$54,859.26.40 plus interest as provided by law to the date of judgment and interest from the date of judgment at the legal rate until paid in full, together with costs and disbursements and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
February 6, 2018

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
Attorney for the Plaintiff

By: 
KATHLEEN A. ZEBROWSKI
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Federal Family Education Loan Program (FFELP) Federal Consolidation Loan Application and Promissory Note		Guarantor, Program, or Lender Identification SMART LOAN		SMT <small>OLAB No. 1645-0036 Form approved Exp. date 10/31/2005</small>
<small>WARNING: Any person who knowingly makes a false statement or misrepresentation on this form is subject to penalties which may include fines, imprisonment, or both, under the United States Criminal Code and 20 U.S.C. 1097.</small>				
Before You Begin Read the Instructions for Completing the Federal Consolidation Loan Application and Promissory Note. Print using dark ink or type. This form must be signed and dated by the applicant(s).				
Section A. Borrower Information				
1. Last Name MULLALY		First Name PATRICK		MI C
2. Social Security Number [REDACTED]				
3A. Permanent Street Address (Include Number, Street, Apartment Number, City, State, Zip Code) 18 VAN BROOK DR				
3B. Permanent Mailing Address, if different (Include P.O. Box, RFD, or General Delivery, City, State, Zip Code) STORMVILLE NY 12582				
4. Home Area Code/Telephone Number		5. Former Name(s)		
6. Date of birth (Month/Day/Year) 01 / 02 / 68		7. Driver's License State and Number State: #		
8. Fax Number and E-mail Address (Optional) Fax () E-mail Address				
9. Employer Name				
Address				
City		State	Zip Code	Employer Area Code/Telephone Number ()
10. Consolidating Lender Name				11. Lender Code, if known
Section B. Spouse Information <small>Only complete this section if your spouse has eligible loans and you both wish to consolidate jointly. If you complete Section B, also include your spouse's loan(s) in Sections D, I and D.2. Your spouse must also sign and date item 38 in Section G.</small>				
12. Last Name		First Name		MI
13. Social Security Number		14. Date of Birth (Month/Day/Year)		
15. Former Name(s)		16. Driver's License State and Number State: #		
17. Fax Number and E-mail Address (Optional) Fax () E-mail Address				
18. Employer Name				
Address				
City		State	Zip Code	Employer Area Code/Telephone Number ()
Section C. Reference Information <small>You must provide two separate references with different U.S. addresses. Do not include individuals who live with you (e.g., spouse) or live outside the United States. Both references must be completed fully and should be relatives or acquaintances you (or you and your spouse, if consolidating jointly) have known for at least three years.</small>				
19. Name				
A. CHRIS PERRY		B. FRANCES MULLALY		
Permanent Address		Permanent Address		
6068 WEST ST APT 3E		24 TOWNSEND BLVD		
City, State, Zip Code		City, State, Zip Code		
NEW YORK, NY 10023		POUGHKEEPSIE, NY 12603		
E-mail Address (Optional)		E-mail Address (Optional)		
Area Code/Telephone Number		Area Code/Telephone Number		
(914) 400-3149		(845) 452-1147		
Relationship to Borrower		Relationship to Borrower		

[illegible]

Section D.2. Education Loan Indebtedness — Loans You Do Not Want to Consolidate

Read the instructions before completing this section. List all education loans that you are not consolidating but want considered in calculating your maximum repayment period. Remember to include loans held by the lender that will be making the Federal Consolidation Loan, but that you do not want to include in the Federal Consolidation Loan. Use the Loan Codes listed in the instructions. If you need to list additional loans, use the Additional Loan Listing Sheet included in this package. Include your spouse's loans only if Section B has been completed. ONLY LIST LOANS THAT YOU DO NOT WANT TO CONSOLIDATE IN THIS SECTION.

[illegible]

Item 33: You may choose one of the repayment options described above for your Federal Consolidation Loan. The maximum repayment period will be 10 to 30 years depending on your student loan debt. You can request a payment period that is shorter than the maximum period allowed. If you do not notify your lender of your choice of payment plans or do not provide your lender with the required documentation for an income-sensitive schedule, your lender will establish a standard payment schedule.

33. Repayment Options (select one):
- | | | | |
|---|---|--|--|
| <input type="checkbox"/> GRAD CHOICE SM 2 with two years of reduced payments | <input type="checkbox"/> GRAD CHOICE SM 4 with four years of reduced payments | <input type="checkbox"/> INCOME-SENSITIVE PAYMENT PLAN | <input type="checkbox"/> EXTENDED PAYMENT PLAN with two years of interest-only payments |
| <input checked="" type="checkbox"/> STANDARD PAYMENT PLAN | <input type="checkbox"/> GRAD CHOICE SM 3 with three years of reduced payments | <input type="checkbox"/> GRAD CHOICE SM 5 with five years of reduced payments | <input type="checkbox"/> EXTENDED PAYMENT PLAN with standard payments |
| | | | <input type="checkbox"/> EXTENDED PAYMENT PLAN with four years of interest-only payments |

Borrower's Name **PATRICK C MULLALY**

Social Security Number _____

Spouse's Name _____

Social Security Number _____

(Please print. Enter spouse's information only if you completed Section B.)

Section F. Borrower Certification and Authorization

(In the case of a Federal Consolidation Loan made to a married couple, all references to "I," "me," "my," "you," and "your" in the Promissory Note, Borrower's Rights and Responsibilities Statement, Borrower Certification and Authorization, as well as other materials provided in connection with this loan apply equally to the borrower and the borrower's spouse unless otherwise stated.)

34. I declare under penalty of perjury that the following is true and correct:

- A. The information I have provided on this Federal Consolidation Loan Application and Promissory Note is true, complete, and correct to the best of my knowledge and belief and is made in good faith.
- B. (i) I do not owe an overpayment on a Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, or a Leveraging Educational Assistance Partnership Grant (formerly State Student Incentive Grant), or if I owe an overpayment, I have made satisfactory arrangements with the holder to repay the amount owed. (ii) I am not now in default on any loan that I am consolidating or, if I am in default, I have either (a) made satisfactory arrangements with the holder of the defaulted loan(s) to repay the amount owed, or (b) for Federal Stafford, SLS, PLUS, or Consolidation loans, I agree to repay the Federal Consolidation Loan under income-sensitive repayment terms.
- C. The loans I am requesting to consolidate are in grace or in repayment status (including loans in deferment or forbearance).
- D. I do not have any other application pending for a Federal Consolidation Loan with any other lender. If all of my FFELP loans are with one holder who is not the consolidating lender, I further certify that I have sought and been unable to obtain a Federal Consolidation Loan from the holder of my loans, or the holder declined to provide me with an income-sensitive repayment schedule.
- E. If I have an outstanding Federal Consolidation Loan, I am eligible for another Federal Consolidation Loan because: (i) I have subsequently borrowed another eligible loan(s), or (ii) I am consolidating a Federal Consolidation Loan with at least one other eligible loan.
- F. All of the loans selected for consolidation have been used to finance my education or my child's education.
- G. I am not subject to a judgment secured through litigation or to an order for wage garnishment, except as I have disclosed.
- H. If I am applying jointly with my spouse, we are legally married to each other.

35. I also make the following authorizations and statements of understanding:

- A. I understand that the amount of my Federal Consolidation Loan will be based on the payoff amounts of my outstanding eligible loans that I selected for consolidation, as provided by the holders of those loans, and may exceed my estimate of such payoff amounts. The actual payoff amounts may differ from the estimated payoff amounts because the holders will include unpaid principal, unpaid accrued interest, and other costs as permitted by federal regulations in the payoffs reported to the consolidating lender. I understand that if any collection costs are owed on the loans selected for consolidation, these costs may be added to the principal balance of the Federal Consolidation Loan and, in the case of Federal Stafford, SLS, PLUS, or Consolidation loans in default and held by a

guaranty agency, may not exceed 18.5 percent of the outstanding principal and interest on the loan at the time the holders certify the payoff amounts.

- B. I understand that I may no longer be eligible for some deferment types and for subsidized deferment periods on some loans being consolidated. I also understand that I may no longer be eligible for some loan discharges and types of forgiveness that were available on the loans being consolidated. If I am applying jointly with my spouse, I further understand that my Federal Consolidation Loan will be fully discharged only if both of us qualify for discharge and may be partially discharged if only one of us qualifies for discharge. I also understand that I may postpone repayment of the loan only if I provide the lender with a request that confirms deferment or forbearance eligibility for both of us at the same time.
- C. I authorize the consolidating lender to contact the holders identified on my application to determine the eligibility and/or payoff amounts for the loans I have selected for consolidation. I further authorize those holders to release that information.
- D. I authorize the consolidating lender to send the proceeds of my Federal Consolidation Loan to each holder of the loans I have identified to pay off the debts.
- E. If the amounts my consolidating lender sends to my holders exceed the amounts needed to pay off the balances of the selected loans, I understand that the holders will refund the excess to my consolidating lender to be applied against the outstanding balance of this loan. If the amounts my consolidating lender sends to my holders are less than the amounts needed to pay off the balances of the loans selected for consolidation, I will be responsible for notifying my consolidating lender about the remaining amounts. I authorize the consolidating lender to include the remaining amounts in this Federal Consolidation Loan, unless I pay off the remaining balances.
- F. I authorize the consolidating lender, the guarantor, or their agents to investigate my credit record and report information concerning my loan status to persons and organizations permitted by law to receive such information.
- G. I authorize the release of information pertinent to this loan: (i) by the school(s), the lender, and the guarantor, or their agents, to the references on this loan and to members of my immediate family unless I submit written directions otherwise; and (k) by and among my schools, lenders, guarantors, the Department of Education, and their agents.
- H. I authorize the Department of Education and its agent(s) to verify my Social Security Number with the Social Security Administration (SSA) and, if the number on my loan record is incorrect, then I authorize SSA to disclose my correct Social Security Number to these parties.
- I. If I have HEAL loans serviced by the consolidating lender and such loans are not included in the Federal Consolidation Loan, I authorize the establishment of a combined payment plan on my behalf.

Section G. Promissory Note (continued on next page) To be completed and signed by the borrower and spouse, if applicable.

(In this Promissory Note, "lender" refers to, and this Promissory Note benefits, the original consolidating lender and its successors and assigns, including any subsequent holder of this Promissory Note.)

36. Promise to Pay:

I promise to pay to the order of the lender, all sums disbursed (hereafter "loan") under the terms of this Promissory Note (hereafter "Note") to pay off my prior loan obligations, plus interest and other charges and fees that may become due as provided in this Note. Unless I make interest payments, interest that accrues on my loan during forbearance periods and on the unsubsidized portion of my loan during deferment periods will be added, as provided under the Act, to the principal balance of the loan, if I fail to make any payments on this Note when due. I will also pay reasonable collection costs, including but not limited to attorney's fees, court costs, and other fees.

If I am applying jointly with my spouse, I understand and agree that I am and will continue to be held jointly and severally liable for the entire amount of the debt represented by the Federal Consolidation Loan without regard to the amounts of our individual loan obligations that are consolidated and without regard to any change that may occur in our marital status. I understand this means that I may be required to pay the entire amount due if my spouse is unable or refuses to pay.

I understand that this is a Promissory Note. I will not sign this Note before reading the entire Note even if I am otherwise advised. I am entitled to an exact copy of this Note and the Borrower's Rights and Responsibilities Statement. My signature certifies I have read, understand, and agree to the terms and conditions of this Note, including the Borrower Certification and Authorization and the Borrower's Rights and Responsibilities Statement.

I UNDERSTAND THAT THIS IS A LOAN THAT MUST BE REPAY.

37. Borrower's Signature _____

Today's Date (Month/Day/Year) 6/6/05

38. Spouse's Signature (If consolidating jointly) _____

Today's Date (Month/Day/Year) _____

U. S. DEPARTMENT OF EDUCATION
SAN FRANCISCO, CALIFORNIA

CERTIFICATE OF INDEBTEDNESS #1 OF 1

PATRICK C MULLALY
18 VAN BROOK DR
STORMVILLE, NY 12582
Account No.XXX

I certify that U.S. Department of Education records show that the BORROWER named above is indebted to the United States in the amount stated below plus additional interest from 07/05/17.

On or about 06/06/05, the BORROWER executed a promissory note to secure a Federal Family Education Loan Program Consolidation loan from SMART LOAN. This loan was disbursed for \$41,255.74 on 01/27/06 at 2.875 % interest per annum. The loan obligation was guaranteed by AMERICAN STUDENT ASSISTANCE, and then reinsured by the Department of Education under loan guaranty programs authorized under Title IV-B of the Higher Education Act of 1965, as amended, 20 U.S.C. 1071 et seq. (34 C.F.R. Part 682). The holder demanded payment according to the terms of the note, and credited \$412.56 to the outstanding principal owed on the loan. The BORROWER defaulted on the obligation on 06/03/07, and the holder filed a claim on the loan guarantee.

Due to this default, the guaranty agency paid a claim in the amount of \$42,861.04 to the holder. The guarantor was then reimbursed for that claim payment by the Department under its reinsurance agreement. Pursuant to 34 C.F.R. § 682.410(b)(4), once the guarantor pays on a default claim, the entire amount paid becomes due to the guarantor as principal. The guarantor attempted to collect this debt from the BORROWER. The guarantor was unable to collect the full amount due, and on 02/21/13, assigned its right and title to the loan to the Department.

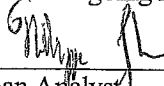
Since assignment of the loan, the Department has credited a total of \$697.00 in payments from all sources, including Treasury Department offsets, if any, to the balance. After application of these payments, the BORROWER now owes the United States the following:

Principal:	\$42,861.04
Interest:	\$11,272.36
Total debt as of 07/05/17:	\$54,133.40

Interest accrues on the principal shown here at the rate of \$3.37 per day.

Pursuant to 28 U.S.C. § 1746(2), I certify under penalty of perjury that the foregoing is true and correct.

Executed on: 9/20/17



Loan Analyst
Litigation Support Unit

Philippe Guillon
Loan Analyst